

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JO ANN HOWARD &)
ASSOCIATES, P.C., *et al.*,)
Plaintiffs,)
vs.) Case No. 4:09CV01252 ERW
J. DOUGLAS CASSITY, *et al.*,)
Defendants.)

MEMORANDUM AND ORDER

This matter comes before the Court on “National City’s Request for Clarification and/or Modification of Proposed Order on Wittner Documents [ECF No. 1681].

On September 8, 2014, the Court, at Plaintiffs’ request, conducted a telephone conference to discuss a dispute that had arisen among the parties regarding production of certain documents currently in the control of Former Wittner Defendants. [ECF No. 1669]. The parties agreed they would confer to achieve a resolution, and Plaintiff would submit a proposed Order. All parties were afforded ten days’ notice, after filing of the proposed Order, to file any objections.

Plaintiffs submitted for the Court’s consideration, a proposed “Order Governing Production of Documents in the Control of Former Wittner Defendants” on September 12, 2014 [ECF No. 1675-1]. Subsequently, National City filed its Request for Clarification and/or Modification of Proposed Order on Wittner Documents. In this Request, National City states its belief the current proposed Order “contemplates and is reasonably read to allow Plaintiffs to give National City a copy of all documents they receive under the proposed order, including the

documents referred to as ‘Plaintiffs’ First Set’ and ‘Plaintiffs’ Second Set’ in the proposed order,” [ECF No. 1681 at 1]. However, National City wishes to avoid any doubt, and requests the Order be modified to state that National City is entitled to receive a copy of all documents Plaintiffs receive under the proposed Order, including the documents referred to as “Plaintiffs; First Set” and “Plaintiffs’ Second Set” in the proposed Order.

On October 1, 2014, Plaintiffs filed “Plaintiffs’ Second Notice Regarding Proposed Order Governing Production of Documents in the Control of Former Wittner Defendants” [ECF No. 1690]. Plaintiffs report they asked Former Wittner Defendants to state their position regarding National City’s request, and they attach to their Notice a letter from Former Wittner Defendants [ECF Nos. 1690, 1690-1]. In the letter, Former Wittner Defendants state as follows:

The Wittner Firm, appreciating National City’s need for access to relevant, non-privileged documents within the above-referenced litigation, feels compelled to reassert that the “Wittner Documents” do not belong to the Wittner Firm, but rather to former clients of the Wittner Firm. In that light, the Wittner Firm proposes that Plaintiff, in connection with the Proposed Order, produce to National City *only* those documents contained within Plaintiff’s First Set and Plaintiffs’ Second Set which are otherwise not returned to the Wittner Firm pursuant to Paragraph 11 of the Proposed Order[.]

[ECF No. 1690-1 at 3]. The Court respects the positions of both National City and the Wittner Firm; however, the concern that National City may receive privileged or unrelated documents, to which it is not entitled, outweighs National City’s objection to the current proposed Order. Consequently, the Court will deny National City’s request for modification. The Court will enter the Order as proposed, on this date. As to National City’s request for clarification regarding production to National City, Plaintiffs shall distribute only those documents contained within Plaintiffs’ First Set and Plaintiffs’ Second Set that are not returned to the Wittner Firm.

Accordingly,

IT IS HEREBY ORDERED that “National City’s Request for Clarification and/or Modification of Proposed Order on Wittner Documents [ECF No. 1681] is **DENIED in part**, and **GRANTED in part**. National City’s Request for Modification of the Proposed Order on Wittner Documents is denied. National City’s Request for Clarification is granted; as discussed above.

So Ordered this 2nd day of October, 2014.


E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE